

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.1355 & 1356/CHNY/2017.
निर्धारण वर्ष /Assessment years : 2013-14 & 2014-2015.

The Assistant Commissioner of Income Tax,
Non Corporate Circle 4,
Coimbatore. **Vs.** M/s. Aquapump Industries,
Post Box No.5803,
Thudiyalur Post,
Coimbatore 641 034.

(अपीलार्थी/Appellant) **[PAN AADFA 8027C]**
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mrs. Ruby George, IRS, CIT.
प्रत्यर्थी की ओर से /Respondent by : Mr. G. Suresh, FCA

सुनवाई की तारीख/Date of Hearing : 16-08-2018
घोषणा की तारीख /Date of Pronouncement : 21-08-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

These are appeals filed by the Revenue directed against orders dated 29.03.2017 of Id. Commissioner of Income Tax (Appeals)-3, Coimbatore.

2. Grounds taken by the Revenue are common for both years, and these are reproduced hereunder:-

1. "The order of the Learned CIT(A) is not acceptable on the facts and circumstances of the case.

2. The Learned CIT(A) has erred in law, in deleting the disallowance on claim made *u/s* 40(b).

3. The Learned CIT(A) has erred in not considering the fact that the firm comprises of three partners, namely R.Kumaravelu (HUF), The Marigold Trust and The Chi") santhernum Trust, wherein not a single partner is a natural person. As per the Partnership Act, a partnership firm cannot be formed between all artificial persons.

4. In the case of Rashik Lal & Co Vs CIT(1998) 96 Taxmann 16 (SC), the Supreme Court has categorically held that a HUF cannot be a partner in a firm. It was further held that such individual, though being a karta of HUF can only be a partner in his individual capacity and cannot represent his HUF. Hence, the status of the firm has to be treated as Association of Persons and thus the claim of expenses on interest and remuneration to partners has to be disallowed, under the provisions of section 40(b).

5. For these and other grounds that may be adduced at the time of hearing, the order of the CIT(A) may be cancelled and that of the Assessing Officer restored".

3. Ld. Counsel for the assessee at the outset submitted that issue regarding validity of the partnership was already considered by this Tribunal in assessee's own case for assessment year 2012-2013 in ITA No.1958/Mds/2016 and C.O.No.111/Mds/2016, dated 03.02.2017. As per the Id. Authorised Representative, the Tribunal had clearly

upheld the genuineness and the validity of the firm. Further, as per the Id. Authorised Representative, the said decision of the Tribunal was followed subsequently for assessment years 2009-10, 2010-11, 2013-14 and 2014-2015 in ITA Nos.1351 to 1354/Chny/2017, dated 26.03.2018.

4. Ld. Departmental Representative fairly agreed that issue as on date was covered in favour of the assessee by Tribunal decision mentioned above. However, according to her, the issue has been taken up by the Department before the Hon'ble Jurisdictional High Court and appeals has been admitted.

5. We have considered the rival contentions and perused the orders of the authorities below. Findings of the Tribunal for assessment year 2012-2013 in ITA No.1958/2016 and C.O.No.111/2016, dated 03.02.2017 are reproduced hereunder:-

'7. We have perused the orders and heard the rival contentions carefully. The question before us is whether the partnership was one formed between the HUF and two trustees or between three individuals. One more question also arises whether a valid partnership could be formed between three persons in representative capacity. Relevant

clauses in partnership deed in the case of Aqua sub Engineering read as under:-

"THIS DEED OF PARTNERSHIP entered this Twenty Fourth Day of May, One Thousand Nine Hundred and Ninety among:

(1) Mr. R. KUMARAVELU, Son of Late Mr. R. Ramaswamy, aged about 37 years, residing at 703, Avanashi Road, Coimbatore, hereinafter called "the Party of the First Part";

(2) Mrs. HOMAI KUMARAVELU, Wife of Mr. R. Kumaravelu, aged about 28 years, residing at 703, Avanashi Road, Coimbatore, hereinafter called "the Party of Second Part";

(3) Dr.H.S. ADENWALLA, Son of Late SorabHirjiAdenwalla, aged about 59 years, residing at Jubilee Mission Hospital, Trichur hereinafter called "the Party of Third Part";

AND

(4) Mrs. DAMAYANTI RAMACHANDRAN, Wife of Late Mr. R. Ramachandran, aged about 43 years, residing at 16 A.T.D Street, Race Course, Coimbatore, hereinafter called "the Party of the Fourty Part" "

8. Similar is the wordings in the case of Aqua Pump Industries also. The Assessing Officer had considered these firms to have been formed between these persons in their representative capacity and not in their individual capacity, considering the following clause appearing in page 2 of the partnership deed. The said clause is reproduced hereunder:-

"WHEREAS, the parties hereto of the Second and Third Parts are Partners in a representative capacities respectively, representing "THE CHRYSANTHEMUM TRUST", and "THE MARIGOLD TRUST", being trusts evidenced by

two indentures of Trust dated the Twentyfifth day of February, One Thousand Nine Hundred and Ninety.

WHEREAS, Mr. R. Kumaravelu the party hereto of the First Part represents the Hindu Undivided Family consisting of himself, his wife and minor daughter, of which Hindu Undivided Family he is at present the Kartha."

9. In our opinion, the above clause would not ipso facto convert partnership firm as one entered between two Trusts and an HUF. This is because of the reason that in the first part of partnership where the description of parties are given, it is never stated that the parties were representing any Trust or HUF. Even if we take that Shri R. Kumaravelu was representing an HUF, by virtue of judgment of Apex Court in the case of Rashik Lal & Co. (supra), he could also be considered as a partner in his individual capacity. Para 13 of the judgment of Apex Court is reproduced hereunder:-

"A Hindu undivided family cannot be in a better position than a firm in the scheme of the Partnership Act. The reasons that led this court to hold that a firm cannot join a partnership with another "individual" will apply with equal force to a Hindu undivided family. In law, a Hindu undivided family can never be a partner of a partnership firm. Even if a person nominated by the Hindu undivided family joins a partnership, the partnership will be between the nominated person and the other partners of the firm. Having regard to the definition of "partnership" and "partners" and in view of the principle laid down in Dulichand's case [1956] 29 ITR 535 (SC), it is not possible to hold that a Hindu undivided family being a fluctuating body of individuals, can enter into a partnership with other individual partners. It cannot do indirectly what it cannot do directly. If the karta or any other member of a Hindu undivided family joins

a partnership, he can do so only as an individual. His rights and obligations vis-a-vis other partners are determined by the Partnership Act and not by Hindu law."

10. What their Lordship held is that even if a person nominated by a HUF joins a partnership, the partnership could be deemed as one between such nominated person and other partners of the firm. The Apex Court did not hold that such partnership would only be an Association of Persons. In any case, it is not in dispute that the assessee was granted the status of registered firm by virtue of provisions of Section 185(1) of the Act since assessment year 1991-92. The position continued for a period of twenty years and it was after such twenty years, the Assessing Officer attempted to disturb this. When a set of facts which permeates from earlier years, is consistently the same, it would not be appropriate to disturb the conclusions reached based on such facts. No doubt, rule of *res judicata* may not be applicable to the income-tax proceedings, but the rule of consistency demands that a position consistently taken shall not be disturbed unless there were significant change in facts. Insofar as reliance placed on Section 40(b) of the Act by the A.O. is concerned, there is nothing in that section to conclude that a partnership could not be formed by a karta of an HUF in his individual capacity with other persons. The same, in our opinion, would also apply where an individual who joins partnership in a representative capacity. It can always be considered that he was doing so in his individual capacity. This position has been reiterated by Hon'ble Apex Court in the case of *Bagyalakshmi & Co. (supra)*, which has also been relied on by the Ld. CIT (Appeals). Considering the facts of the case, we are inclined to uphold the orders of the CIT (Appeals). The appeals of the Revenue stand dismissed".

Ld. Commissioner of Income Tax (Appeals) while allowing the appeals of the assessee had followed the above decision. We therefore do not find any reason to interfere with the orders of the Id.

Commissioner of Income Tax (Appeals).

6. In the result, the appeals of the Revenue stand dismissed.

Order pronounced on Tuesday, the 21st day of August, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21st August, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |